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June 24, 2005

**VIA ECFS AND ELECTRONIC MAIL**

Mr. Tom Navin  
Chief, Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

**Re: *Michigan Batch Hot Cut Processes*  
Unbundled Access to Network Elements; Review of the Section 251  
Unbundling Obligations of Incumbent Local Exchange Carriers  
WC Docket No. 04-313; CC Docket No. 01-338**

Dear Mr. Navin:

I am writing to you in response to Talk America's May 9, 2005, *ex parte* correspondence regarding SBC Michigan's batch hot cut practices. In its May 9<sup>th</sup> letter, Talk America

urge[s] the Commission to immediately correspond with the Michigan PSC, confirming that it did not intend (sic) to preempt independent state law action regarding batch cut processes and supporting reinstatement of the MPSC's Order directing SBC to provide those processes so that the embedded base of UNE-P circuits may be converted within the 12-month transition established by the Commission.

As described in greater detail below, SBC Michigan and Talk America have entered into a settlement agreement regarding the hot cut transition process in Michigan. Therefore, no action is required by the Commission relating to Talk America's May 9<sup>th</sup> correspondence.

**Michigan Batch Hot Cut Docket:**

In an Order dated March 29, 2005, the Michigan Public Service Commission ("MPSC") initiated Case No. U-14463. The docket was commenced to promote settlement of hot cut process issues (*i.e.*, to address issues related to the process by which CLECs migrate their customers off of the local exchange switches of ILECs). The MPSC's March 29<sup>th</sup> Order directed Competitive Local Exchange Carriers ("CLECs") in Michigan to submit to SBC Michigan a plan for transitioning their embedded base of ULS/UNE-P customers to an alternate serving arrangement. On April 12, 2005, several CLECs, including Talk America, served submissions on SBC Michigan regarding their UNE loop and hot cut plans. On April 26, 2005, last best offers regarding the hot cut transition process were submitted by SBC, Talk America and other CLECs in Michigan.

Settlement Agreement between SBC Michigan and Talk America:

Following extensive discussions between SBC Michigan, Talk America, and the MPSC's Director of the Telecommunications Division, Mr. Orjiakor N. Isiogu, SBC Michigan and Talk America entered into a settlement agreement on May 25, 2005, related to the hot cut transition process in Michigan. The settlement agreement identifies a detailed process pursuant to which Talk America will transition its embedded base of UNE-P customers to UNE-L serving arrangements using SBC's "all day cut" process. Per the MPSC's June 7, 2005, Order in U-14463 ("Order"),

[t]he settlement agreement [between SBC and Talk] evidences the agreement of SBC and Talk to continue their current process for planning and forecasting for transiting customers from UNE-P to unbundled network element-loop (UNE-L) and for interconnection trunking. The parties also committed to continue their use of a specific 'all day cut' process, as well as preserving their ability to use SBC's coordinated hot cuts or frame due time processes under the prices, terms, and conditions of their interconnection agreement rather than the settlement agreement. The parties also set forth responsibilities regarding items such as binding commitments, liquidated damages, hot cut volumes, prices, and the application of existing performance measures.

*Order* at 4 (a copy of the order is attached).

SBC Michigan and Talk America also filed a joint application for approval of an amendment to their interconnection agreement incorporating the terms of the settlement agreement. In its June 7<sup>th</sup> Order in U-14463, the MPSC formally approved the settlement agreement between SBC and Talk America. Additionally, the MPSC issued an Order on June 7, 2005, in Case No. U-13569, approving the amendment to the SBC and Talk America interconnection agreement incorporating the terms of the settlement agreement.

Without addressing the merits of Talk America's May 9<sup>th</sup> *ex parte*, the successful resolution of the matter in Michigan renders moot the issues raised by Talk America in its letter. Accordingly, the Commission need take no action in response to Talk America's letter.

If you have any questions, please do not hesitate to contact me at (202) 326-8895.

Sincerely,

/s/

Jim Lamoureux  
Senior Counsel  
SBC Services, Inc.

Attachment

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,	)	
to resolve certain issues regarding hot cuts.	)	Case No. U-14463
_____	)	

At the June 7, 2005 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**OPINION AND ORDER**

**History of Proceedings**

On February 4, 2005, the Federal Communications Commission (FCC) issued its order on remand<sup>1</sup> adopting new rules governing the network unbundling obligations of incumbent local exchange carriers (ILECs). Among other things, the *TRRO* relieved ILECs of the responsibility to provide competitive local exchange carriers (CLECs) with wholesale access to switching services via unbundled network element-platform (UNE-P) on and after March 11, 2006 at regulated rates.

An application filed by SBC Michigan (SBC) in Case No. U-14305 requested that the Commission convene a proceeding to ensure that SBC's interconnection agreements adopted

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<sup>1</sup>In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313 and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, rel'd February 4, 2005 (TRRO).

under Sections 251 and 252 of the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 (FTA), 47 USC 151 *et seq.*, remain consistent with federal law.<sup>2</sup>

The March 29, 2005 order in Cases Nos. U-14303, U-14305, U-14327, and U-14463 opened this docket to address issues related to the process by which CLECs migrate their customers off of the local exchange switches of ILECs. The migration process is commonly referred to as a “hot cut.”<sup>3</sup> Issues related to hot cuts are critically important because hundreds of thousands of end-user customers of CLECs in Michigan receive local service via UNE-P. In fact, two CLECs, Talk America, Inc. (Talk) and LDMI Telecommunications, Inc. (LDMI) alone have over 350,000 customer lines that must be hot cut no later than March 10, 2006, the last date on which SBC has indicated it will make UNE-P available under Section 251 of the FTA at regulated rates. Accordingly, the Commission was concerned that all ILECs and CLECs in this state be prepared to undertake the migration process in an orderly and efficient manner. Paramount to the Commission’s consideration in this proceeding is the importance of ensuring that end-user customers are migrated off of ILEC’s UNE-P offering in a manner that protects the public interest and ensures that service is not unreasonably disrupted. Toward that end, the Commission stated, in pertinent part, as follows:

The Commission is persuaded that it should promote settlement of hot cut process issues and doing so does not contravene Judge Battani’s order. To that end, the Commission opens a new docket for resolving those issues, Case No. U-14463, in which all filings and actions related to hot cuts will be determined. The Commission finds that within 14 days of the date of this order, the CLECs shall

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<sup>2</sup>Section 201 of the Michigan Telecommunications Act (MTA), MCL 484.2201, provides that the Commission shall have jurisdiction and authority to administer the MTA and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state.

<sup>3</sup>This is not the Commission’s first attempt to address such matters. *See*, Case No. U-13891, which was devoted to *batch* hot cut issues. *See also*, the January 6, 2005 order in *Michigan Bell v Lark et al.* (ED MI, Southern Division, Case No. 04-60128, Hon Marianne O. Battanni), which prevents the Commission from enforcing the Commission’s June 28, 2004 order in Case No. U-13891 regarding *batch* hot cuts.

submit to the ILECs the number of lines that need to be moved via hot cut and a plan for those moves, i.e., from and to what configuration and the process desired. Within 14 days after receipt of the plan, if the parties cannot agree on the process or price, they shall submit their last best offer to Orjiakor Isiogu, Director of the Commission's Telecommunications Division, who will act as mediator. Within 30 days of receipt of those last best offers, Mr. Isiogu shall submit his recommended plan to the Commission. The parties will have seven days to object. However, any objection must in good faith assert that the recommendation is technically infeasible or unlawful. Without timely objections, the mediator's recommendation will be final. If the parties are able to agree, no filing need be made.

March 29 order, pp. 14-15.

On April 12, 2005, Talk, LDMI, MCImetro Access Transmission Services LLC (MCImetro), CMC Telecom, Inc. (CMC), Global Telecom Inc., d/b/a Global Connections (Global), Grid 4 Communications, Inc. (Grid 4), Zenk Group, Ltd d/b/a Planet Access, Superior Technologies, Inc., d/b/a Superior Spectrum Communications (Superior), and Quick Communications, Inc., d/b/a Quick Connect USA (Quick) served submissions on SBC regarding their hot cut plans.

On April 26, 2005, last best offers were submitted by SBC, Talk America, LDMI, and MCImetro. On the same day, Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems filed a letter with the Commission indicating that it had not received any hot cut proposals from any CLECs.

#### The Mediator's Recommendations

The mediator and members of the Staff of the Commission's Telecommunications Division (Staff) conducted extensive discussions with the parties through use of meetings, conference calls, and negotiation sessions. The mediator filed a report of his findings and recommendations in this docket on May 26, 2005. In so doing, the mediator commended the parties for their spirit of cooperation.

The May 26 report indicates that SBC and Talk were able to reach a settlement agreement, a copy of which was filed in this docket on May 25, 2005. The settlement agreement evidences the agreement of SBC and Talk to continue their current process for planning and forecasting for transiting customers from UNE-P to unbundled network element-loop (UNE-L) and for interconnection trunking. The parties also committed to continue their use of a specific “all day cut” process, as well as preserving their ability to use SBC’s coordinated hot cuts or frame due time processes under the prices, terms, and conditions of their interconnection agreement rather than the settlement agreement. The parties also set forth responsibilities regarding items such as binding commitments, liquidated damages, hot cut volumes, prices, and the application of existing performance measures.

Additionally, the mediator’s report indicates that on May 25, 2005, CMC, Global, Grid 4, Planet Access, Superior, Quick, and SBC filed a joint submission advising the Commission that those CLECs deemed SBC’s current processes for transitioning their embedded bases of UNE-P customers sufficient to meet their needs, and that there was no current dispute with SBC requiring Commission intervention. Although the CLECs have not yet developed specific plans to transition their embedded bases of UNE-P customers to alternative serving arrangements, they have indicated their commitment to developing such plans as soon as reasonably possible. These parties also have agreed to cooperate in scheduling any required cuts in order to enable SBC to efficiently process conversion orders and avoid unnecessary disruption to customers.

With regard to MCImetro, the mediator stated that MCImetro, which has a commercial agreement in place replacing all UNE-Ps with “Local Wholesale Complete” (LWC), participated in this proceeding to facilitate interconnection agreement negotiations for appropriate terms, conditions, and pricing for hot cuts. According to the mediator, MCImetro’s hot cut proposal

would be for transitioning from LWC to non-SBC provided switching after an interconnection agreement is in place. He stated that it is MCImetro's position that, after an interconnection agreement is in place, the issue of timing, location, and number of hot cuts should be discussed and any disagreements should be brought to the mediator. He also indicated SBC's belief that MCImetro's hot cut issues are not appropriately addressed in the context of this case.

In light of these circumstances, the mediator recommended that because MCImetro agreed to the LWC agreement, MCImetro should be allowed to keep its UNE-P customers under the LWC arrangement for the term of that agreement. For this reason, he believed that there was no urgent reason for MCImetro and SBC to immediately negotiate regarding the transition of customers. Rather, the mediator recommended that meetings should be scheduled for negotiation of this issue in the near future. The mediator indicated that he would provide a recommendation to the Commission at a later date if the parties are not able to agree. He also recommended that the Commission keep this docket open for mediation of disputes until the end of the transition period of March 11, 2006.

Finally, despite extensive negotiations between SBC and LDMI, and the assistance of the mediator and the Staff, the mediation report indicates that SBC and LDMI were not able to reach an agreement regarding a plan to transition LDMI's embedded base of UNE-P customers to UNE-L or other serving arrangements. The report points out that the main disagreement concerns pricing. Accordingly, in his May 26 report, the mediator made specific recommendations for resolution of this dispute. In doing so, the mediator stressed that LDMI's customer base is different than Talk's customer base. He observed that while Talk has primarily residential customers, whereas LDMI's customers are primarily business customers, which generally means

that LDMI has more lines per customer than Talk, and that LDMI's customers would be more prone to economic hardship due to the loss of phone service during the hot cut.

In light of these concerns, the mediator recommended that the Commission require SBC and LDMI to adhere to the SBC/Talk agreement regarding the terms and conditions for the hot cuts to transfer LDMI's embedded customer base from UNE-P to UNE-L. Specifically, the mediator stated that the SBC/LDMI agreement should include a description of the "all day cut" process and the process to be used for coordinated hot cuts (CHC) and frame due time (FDT) cuts. He also recommended inclusion of provisions for a 30-day planning schedule with weekly updates and a forecasting schedule for interconnection trunking at least two months in advance, a 10-day binding commitment interval for the hot cuts with a variance allowed for last minute changes, and penalties imposed for missed commitments consistent with the language in the Talk agreement. According to the mediator, the hot cut volumes should be the same as in the SBC/Talk agreement, which provides for up to 100 hot cuts per central office (CO) per day and the ability to negotiate an increase of the limits after 30 days of successful sustained volumes. He also recommended that the pricing structure should be the same as the SBC/Talk agreement for the "all day cut" process. For the FDT and CHC processes, the mediator recommended that the pricing shall be a \$20.00 flat rate per cut for FDT and a \$21.00 flat rate per cut for CHC. According to him, discounts shall apply when the total volume of all cuts is over 50 per CO per day. For hot cuts below the 50 cut threshold, the mediator stated that current rates shall apply, with billing as set forth in the SBC/Talk agreement. Finally, the mediator recommended that the Commission order SBC and LDMI to draft an interconnection agreement amendment incorporating his recommendations regarding hot cut terms, conditions, and pricing to be available until February 15, 2006, which he



believed would be sufficient for the completion of the transition of LDMI's embedded base within the FCC's timeframes.

### Objections

On June 2, 2005, objections to the mediator's recommendation were filed by SBC and MCImetro. In its objections, SBC states that it would be willing to voluntarily enter into an agreement with LDMI that is identical in all respects to its agreement with Talk. However, SBC maintains that it should not be required to offer discounts for CHC and FDT. According to SBC, the mediator's recommendation would unlawfully result in prices for CHC and FDT below the rates recently approved by the Commission in Case No. U-13531. Furthermore, SBC insists that there is no lawful basis for the Commission to set prices for FDT or CHC outside of a contested case hearing or the negotiation and arbitration provisions of Section 251 and 252 of the FTA. Indeed, SBC stresses that its existing interconnection agreement with LDMI already establishes the prices for FDT and CHC. Moreover, apart from these legal impediments, SBC insists that its current FDT and CHC prices already provide an effective discount for cuts involving multi-line business customers.

As a preface to its objections, MCImetro notes that it is presently actively working with the mediator and the Staff to create a dialogue with SBC on batch hot cut terms and conditions. However, out of concern that its failure to file timely objections to the mediator's recommendations could prejudice its position, MCImetro states that it was forced to file objections even though it and SBC might ultimately reach agreement or the mediator might subsequently issue another recommended plan to the Commission. In any event, MCImetro maintains that the mediator's recommendations are not lawful because they fail to contain a final plan that allows MCImetro to obtain batch hot cuts. Accordingly, MCImetro requests that the Commission (1) extend the

timeline for the mediator to submit a new recommended plan and for parties to file new objections, (2) allow for resolution of the batch hot cut issues taking place in Case No. U-14447 with appropriate terms and conditions in a batch hot cut amendment, (3) adopt MCImetro's recommended terms and conditions for a batch hot cut amendment, or (4) otherwise provide for a process for dispute resolution on appropriate terms and conditions with respect to batch hot cuts.

### Discussion

The Commission has reviewed the mediator's recommendation and the objections filed by SBC and MCImetro. The Commission finds that the mediator's recommendations are just, reasonable, and in the public interest, and should be adopted.

The Commission finds that SBC's objections to the mediator's pricing recommendations for CHC and FDT cuts for LDMI are not well taken. As previously noted, the Commission has authority pursuant to Section 201 of the MTA to administer certain provisions of the FTA, including authority to resolve disputes over the terms and conditions of interconnection agreements arising under Section 251 of the FTA. Indeed, SBC asked the Commission to commence this proceeding specifically to invoke the Commission's authority to promote the prompt resolution of hot cut process issues. The Commission responded by crafting a quick and simple dispute resolution process in its March 29, 2005 order in Cases Nos. U-14303, U-14305, U-14327. SBC never objected to the March 29 order and voiced no such concerns during the mediation process. Having sought the Commission's assistance in this matter and willingly participated in the process, SBC's post-mediation objections to the process established in the March 29 order appear to be more reflective of its disappointment with the result recommended by the mediator with regard to LDMI than the process used by the Commission to which it initially agreed.

The Commission has exhausted valuable resources and irreplaceable time in an effort to resolve the hot cut issues that must be addressed for the transition from UNE-P to UNE-L to occur. Because there is very little time remaining before the end of the availability of UNE-P at regulated prices on March 11, 2006, the Commission is persuaded that it should grant approval of the mediator's recommendations with regard to the SBC/LDMI dispute at this time. Other than the pricing for these hot cuts, the provisions of the mediator's recommendation mirror the SBC/Talk negotiated agreement. SBC and Talk were able to agree on a pricing proposal that established rates at a level below those currently offered. The reduced rates incorporate recognition of specific volumes, provision of monthly forecasts and weekly updates of anticipated needs, binding commitments for hot cuts at least 10 days before the cuts, cooperative planning with SBC, and, importantly, the provision for penalties.

The Commission notes that the pricing schedule negotiated between Talk and SBC for a hot cut process defined as the "all day cut" supports the conclusion that cost savings are associated with larger volumes of hot cuts. As such, this pricing agreement is a valid consideration when setting the price for CHCs and FDTs for the migration of embedded base customers. The Commission also believes that the additional conditions that CLECs, specifically LDMI, are subjected to, pursuant to the mediator's recommendation, result in efficiencies that need to be recognized in relation to the current CHC and FDT hot cut prices. The Commission finds that the CHC and FDT pricing determined by the mediator's recommendation reasonably recognizes the cost reducing impacts of all the additional requirements imposed on CLECs as recommended by the mediator, conditions that are not imposed and recognized in the current CHC and FDT prices. Moreover, the Commission finds that that the price recommended by the mediator is reasonable as it falls in the mid-range of the prices suggested by SBC and the CLECs.

The Commission's approval of the mediator's recommendation with regard to the SBC/LDMI dispute means that those pricing levels shall be effective until further order of the Commission. In the event that SBC remains dissatisfied with the Commission's order, SBC may file an application for a contested Section 251 proceeding before the Commission.

Concerning MCImetro, the Commission notes that there are currently scheduled discussions related to LWC hot cuts. The Commission finds that it is premature to become involved in SBC and MCImetro's unique situation. The Commission does, however, believe that the LWC arrangement between SBC and MCImetro should not be viewed as an abrogation of its rights related to UNE-P conversions, but an attempt to alleviate the timing concerns of extensive cuts before the March 11, 2006 deadline for the elimination of UNE-P at a regulated price. As such, the Commission hopes that the parties put their best efforts forward to resolving their issues and negotiate an agreement to convert MCImetro's LWC customers to other switching arrangements.

Due to the continuation of discussions, the docket in this case shall remain open to facilitate further negotiations and the mediator shall file additional reports with the Commission as necessary.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*
- b. The settlement agreement between SBC and Talk should be approved.
- c. The recommendations set forth in the mediator's May 26 report should be approved as set forth in the order.

d. The docket in Case No. U-14463 should remain open and the efforts to mediate further resolutions to hot cut issues should continue.

THEREFORE, IT IS ORDERED that:

A. The May 25, 2005 settlement agreement between SBC Michigan and Talk America, Inc., attached to the mediator's report, is approved.

B. The recommendations of Orjiakor Isiogu, Director of the Commission's Telecommunications Division, set forth in his May 26, 2005 report, attached to this order as Exhibit A, are approved, as set forth in the order.

C. The docket in Case No. U-14463 shall remain open and the efforts to mediate further resolutions to hot cut issues shall continue.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

( S E A L )

/s/ J. Peter Lark  
Chairman

By its action of June 7, 2005.

/s/ Robert B. Nelson  
Commissioner

/s/ Mary Jo Kunkle  
Its Executive Secretary

/s/ Laura Chappelle  
Commissioner

d. The docket in Case No. U-14463 should remain open and the efforts to mediate further resolutions to hot cut issues should continue.

THEREFORE, IT IS ORDERED that:

A. The May 25, 2005 settlement agreement between SBC Michigan and Talk America, Inc., attached to the mediator's report, is approved.

B. The recommendations of Orjiakor Isiogu, Director of the Commission's Telecommunications Division, set forth in his May 26, 2005 report, attached to this order as Exhibit A, are approved, as set forth in the order.

C. The docket in Case No. U-14463 shall remain open and the efforts to mediate further resolutions to hot cut issues shall continue.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

By its action of June 7, 2005.

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Commissioner

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Its Executive Secretary

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Commissioner

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter on the Commission's own motion, )  
to resolve certain issues regarding hot cuts. )  
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Case No. U-14463

**Mediator's Recommendation**

On March 29, 2005, the Commission initiated this proceeding to address the appropriate method by which Competitive Local Exchange Carriers could migrate their customers off of the SBC and Verizon local exchange switches. This process is commonly referred to as a Hot Cut. This proceeding was initiated in part in response to SBC's application requesting that the Commission convene a proceeding to ensure that SBC's interconnection agreements adopted under Sections 251 and 252 of the federal Communications Act remain consistent with federal law (See MPSC Case No. U-14305.) One network element in particular that SBC sought to have addressed by the Commission in an amendment to carriers' existing interconnection agreements was the availability of local switching, particularly when provided in combination with loops and transport. This combination is commonly referred to as UNE-P.

It is important to note, as SBC alleges in its Petition in MPSC Case No. U-14305 with respect to the elimination of UNE-P, that arriving at a hot cut process to migrate customers off of SBC's switches is a matter of considerable urgency. Between Talk America and LDMI Communications, there are over 350,000 customer lines that must be hot cut no later than March 10, 2006, the last date on which SBC has indicated it will make UNE-P available under Section 251 of the federal Communications Act. SBC and all CLECs that will undertake this migration

process will have to devote considerable resources to ensuring that the hot cuts are completed in an orderly and efficient manner.

Section 201 of the Michigan Telecommunications Act, MCL Sec. 484.2201, provides that the Commission shall have jurisdiction and authority to administer the MTA and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state. In exercising its authority under state law over the terms of interconnection among carriers, the Commission must not only be mindful of state laws, but also federal laws, including Sections 251 and 271 of the federal Communications Act, and Federal Communications Commission decisions adopted under those sections. Paramount to the Commission's consideration in this proceeding is the importance of ensuring that end user customers are migrated off of SBC's UNE-P offering in a manner that protects the public interest and ensures that service is not unreasonably disrupted.

The hot cut process requires that the end user's service and dial-tone is not available for the period of time that the loop is being migrated to a different switch. For both business and residential customers, this presents a significant public safety concern. The Commission must ensure that hot cuts are performed in a coordinated manner between carriers to protect end users' access to emergency services. For business customers, there is the additional problem that during the hot cut, business customers will also have their business operations disrupted if done during normal business hours. This too is a matter of considerable concern to the Commission.

Pursuant to the Commission's March 29, 2005 order, several parties served their hot cut submissions on SBC on April 12, 2005, and on April 26, 2005 the last best offers were submitted to Mr. Orjiakor N. Isiogu, the Commission appointed mediator. The filings were made by Talk America, MCI, LDMI, CMC Telecom, Global Connection, Grid4 Communications, Planet



Access and Quick Connect. Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems' (collectively Verizon) filed a letter with the Commission on April 26, 2005 stating that Verizon had not received any CLEC hot cut proposals pursuant to the Commission's March 29, 2005 Order.

Upon receipt of the last best offers, the mediator scheduled meetings among the individual parties to attempt to resolve the open issues. Several meetings, conference calls and negotiation sessions were held to resolve the issues over the past thirty days. The mediator would like to commend the parties to these negotiations on their willingness to move towards a solution to agree to a hot cut process, price and schedule. The mediator is pleased to report that SBC has reached agreement with Talk America on the transfer of its embedded base from UNE-P to UNE-L. This transition is predominantly for residential customers and satisfies a timeline to allow Talk America to transition its embedded base of UNE-P customers to UNE-L by the end of 2005. A copy of the agreement is attached (Attachment 1).

SBC and LDMI were in negotiations but were unable to reach an agreement. The main point of disagreement between SBC and LDMI is the pricing differential between the prices SBC agrees to provide hot cuts to Talk America, and the pricing that SBC will charge for hot cuts provided to LDMI. LDMI's customer base is different than Talk America's customer base. While Talk America has primarily residential customers, LDMI's customers are primarily business customers. This generally means that LDMI has more lines per customer than Talk America, and there is a great economic impact when business customers lose dial tone and phone service during the hot cut. As noted above, the Commission is concerned not only about the public safety implications of the service disruption for business end users, but also the economic impact on their business operations. The transfer of LDMI's embedded base includes some

different scenarios for business customers utilizing the coordinated hot cut (CHC) and the frame due time (FDT) options. Talk America and SBC reached agreement on what they describe as an "All Day" hot cut plan. Under this agreement, Talk America would request that a certain number of specified telephone lines be hot cut on a particular day, and SBC would hot cut those lines at some point during normal business hours. For LDMI and SBC, the mediator recommends a similar agreement to the Talk America agreement covering the terms and conditions for the hot cuts to transfer LDMI's embedded customer base from UNE-P to UNE-L.

The SBC/LDMI agreement should include a description of the "all day cut" process and the process to be used for FDT and CHC. It should also include provisions for a 30 day planning schedule with weekly updates and a forecasting schedule for interconnection trunking at least two months in advance, a ten (10) day binding commitment interval for the hot cuts with a variance allowed for last minute changes and penalties imposed for missed commitments consistent with the language in the Talk Agreement. The volumes should be the same as in the Talk Agreement of up to 100 hot cuts per central office (CO) per day including a provision to negotiate an increase of the limits after 30 days of successful sustained volumes.

The pricing structure should be the same as the Talk Agreement for the "all day cut" process. For the FDT and CHC processes, the mediator recommends that the pricing shall be \$20.00 flat rate per cut for FDT and \$21.00 flat rate per cut for CHC. The discounts shall apply when the total volume of all cuts is over 50 per CO per day. For hot cuts below the 50 cut threshold, the current rates shall apply. Billing should occur as set forth in the Talk Agreement and the agreement should include terms for using a project code to identify these hot cuts. The mediator recommends that the terms and pricing of the agreement shall be available until February 15, 2006 which will allow for the completion of the transition of LDMI's embedded

base within the FCC timeframes. The mediator recommends that the Commission direct the parties to draft an interconnection agreement amendment incorporating these terms, conditions and pricing.

SBC has also reached agreement with CMC Telecom, Global Connection, Grid4 Communications, Planet Access and Quick Connect, collectively. This agreement allows the named CLECs to utilize the "All Day Cut" process, coordinated hot cuts and frame due time cuts that have been adopted by agreement with Talk America and as recommended by the mediator for LDMI and SBC. This agreement allows for additional time for the CLECs to be able to provide definitive plans for transitioning their customer base. At this time, these CLECs do not have specific plans to transition their UNE-P lines to alternative serving arrangements, but will provide such plans to SBC Michigan as soon as reasonable possible. That joint submission is attached (Attachment 2).

MCI has a Commercial Agreement in place replacing all UNE-P's with "Local Wholesale Complete" (LWC). MCI believes that it should participate in this proceeding to facilitate Interconnection Agreement (ICA) negotiations for appropriate terms, conditions and pricing for hot cuts. MCI's hot cut proposal would be for transitioning from LWC to non-SBC provided switching after an ICA is in place. MCI states that after an ICA is in place the issue of timing, location, and number of hot cuts will be discussed and Commission staff would be approached to mediate any disagreements. SBC rejects MCI's inputs into this proceeding since it expands the scope of the Commission's Order from UNE-P hot cuts to include LWC hot cut arrangements.

The mediator recommends that since MCI has signed onto the LWC agreement, MCI is allowed to keep its UNE-P customers under the LWC arrangement for the term of the agreement

so it is not an urgent matter to have an agreement on the transition of customers today. The mediator recommends that meetings should be scheduled for negotiation of this issue next week. The mediator will provide a recommendation to the Commission at a later date if the parties are not able to agree. The mediator recommends that the Commission keep this docket open for mediation of disputes until the end of the transition period of March 11, 2006.

MICHIGAN PUBLIC SERVICE COMMISSION



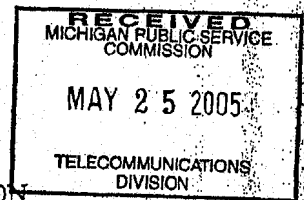
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Orjiakor N. Isiogu, Director  
Telecommunications Division

Date: May 26, 2005

# **Attachment 1**



STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter on the Commission's own )  
motion, to resolve certain issues regarding )  
hot cuts. )  
\_\_\_\_\_ )

Case No. U-14463

**SETTLEMENT AGREEMENT**  
**Between Talk America Inc. and SBC Michigan**

**PREAMBLES**

Whereas, the Michigan Public Service Commission (the "Commission") initiated this case by order dated March 29, 2005; and

Whereas, the Commission created this case to promote the settlement of transition plans for competitive local exchange carriers ("CLECs") to transition their embedded base of customers from the unbundled network element platform ("UNE-P") as a result of the Federal Communications Commission's ("FCC") issuance of the February 4, 2005 Order on Remand (the "Triennial Review Remand Order" or "TRO Remand") in WC Docket No 04-313 and CC Docket No. 01-338; and

Whereas, the Commission encouraged SBC Michigan ("SBC") and CLECs, such as Talk America Inc. ("Talk"), to negotiate settlements regarding these transition plans, including hot cut processes and prices; and

Whereas, through the facilitation of the Michigan Public Service Commission Staff ("Staff"), SBC and Talk have reached an agreement regarding the transition of Talk America's embedded base of customers from the unbundled network element platform ("UNE-P").

THEREFORE, the parties agree as follows:

### **Planning Forecasts:**

1. SBC and Talk will continue their currently used processes to cooperate and share information for planning and forecasting purposes relating to the transitioning of customers from UNE-P to UNE-L. By Noon Central Time on Wednesday of each week, Talk will provide to SBC updated forecasts with the best information available to Talk. This information will be sent electronically to SBC in care of Janice Bryan at [jb7983@sbc.com](mailto:jb7983@sbc.com) or another person designated by SBC.
2. SBC and Talk will continue their currently used processes for planning and forecasting interconnection trunking. Specifically, interconnection trunking requirements should be planned out at least 2 months in advance of when the trunking must be in place and working (current process). For SBC's trunking to Talk, Talk must provide SBC either the busy minutes of use per SBC tandem and SBC end office, or the number of trunks per SBC tandem and SBC end office that should be installed to each one of Talk's switches. Talk must also provide to SBC its trunking plans for each one of its switches. Trunking for 9-1-1 must also be planned so that adequate capacity exists to ensure that all end users can reach 9-1-1 in an emergency.

### **All Day Cut Process:**

3. For Talk's embedded base of UNE-P customers, Talk and SBC will continue the use of their current process for hot cuts, *i.e.*, all day cuts, with pre-cut testing and pre-wiring. Orders are required to be submitted and confirmed (*i.e.*, FOC'd) by 8:00 A.M. Central Time five (5) business days prior to the due date. Talk's CFA

must have dial tone with assigned TN programmed on the line by 8:00 A.M. four (4) business days prior to the due date.

4. Talk and SBC agree that Talk may use other hot cut processes (e.g., Coordinated Hot Cuts or Frame Due Time) under the prices, terms and conditions of the parties' interconnection agreement, rather than this agreement.

**Binding Commitment:**

5. When placing orders for all day cuts for its embedded base of customers, Talk will provide a binding commitment for each Central Office ("CO") ten (10) business days from the due date for the hot cut (a "Binding Commitment"). For example, Talk would provide a Binding Commitment on Monday, June 6, 2005 for hot cuts to be completed on Monday, June 20, 2005. In the event of customer cancellations, Talk will undertake best efforts to provide an equal number of substitute hot cuts in the same end office to be completed in the same interval.
6. Talk will be subject to liquidated damages of ten dollars (\$10.00) per line outside a ten percent (10%) variance when Talk's actual confirmed (i.e., FOC'd) orders are less than its Binding Commitment. The liquidated damages will be calculated as follows: if Talk made a Binding Commitment of 100 all day cuts, but then only placed orders for 50 all day cuts, then Talk would pay liquidated damages of ten dollars (\$10.00) per line on 40 lines ( $90\% \times 100 - 50 \times \$10$ ) or \$400.00. If Talk made a Binding Commitment of 100 all day cuts, but then only placed orders for 90 lines to be cut, there would be no liquidated damages. In calculating the number of lines that constitute the variance, the number will be rounded to the highest whole number.



7. The parties agree that no liquidated damages shall be imposed for variances caused by an event of *force majeure* as that term is defined in the parties' interconnection agreement.

**Volume:**

8. Subject to the paragraph 9 below, Talk may submit orders for up to 100 hot cuts per day per CO for its embedded base of residential customers. SBC shall be required to process the number of hot cuts ordered by Talk of up to 100 hot cuts per day per CO.
9. Once Talk has placed orders for 90 to 100 all day cuts per CO per day on a sustained basis for one month, Talk and SBC will negotiate in good faith about increasing the volume of cuts above 100 all day cuts per CO per day (but not to exceed 150 all day cuts per CO per day), along with the appropriate premium pricing for those all day cuts above 100. If, after negotiations, either party declares an impasse, then the resolution of this issue will be referred to the mediator in U-14463 and his decision will be binding on the parties on this issue.

**Price:**

10. For its embedded base of customers, the price to be paid by Talk to SBC for all day cuts under this agreement will be based on the volume of cuts ordered per day per CO as follows:
- 1 through 49 lines: \$24.05/line
  - 50 through 74 lines: \$20.00/line for all lines
  - 75 or more lines: \$19.00/line for all lines

By way of example, if Talk orders 72 lines in a particular CO on June 15, 2005, the price in aggregate for such orders shall be \$1440.00 (72 x \$20.00), inclusive of all service order and disconnect charges, and assuming that one order was submitted for each line. By way of further example, if Talk America orders 80 hot cuts in a particular CO on June 20, 2005, the price in aggregate for such orders shall be \$1520.00 (80 x \$19.00), inclusive of all service order and disconnect charges, and assuming that one order was submitted for each line.

11. The pricing set forth in this settlement agreement is applicable to all day cuts ordered on or before December 15, 2005. Thus, all day cut orders submitted by Talk on December 15, 2005 with a due date of December 22, 2005 will be subject to the above pricing.
12. Talk and SBC Michigan will develop a four (4) letter/numerical project code to identify the all day cuts subject to this pricing. In order to receive the above pricing, Talk's orders must include the project code.

**SBC Michigan's Performance:**

13. SBC's performance of the all day cuts will be subject to its existing performance measures.

**General:**

14. The provisions of this settlement agreement shall apply to all orders submitted by Talk America and its affiliates, as that term is defined in Section 3 of the Communications Act of 1934, as amended, 47 U.S.C. §153.

15. Notwithstanding anything above, hot cuts to be performed for Talk's newly acquired customers will not be governed or impacted by this settlement agreement.
16. This settlement agreement will be interpreted as if drafted jointly by the parties.
17. The parties agree that this settlement agreement will be filed with the Commission and subject to the jurisdiction of the Commission. To the extent this settlement agreement is incorporated as an amendment to the parties' interconnection agreement, the parties will cooperate to submit any required joint application or other documents for Commission approval. The parties agree that the Commission may resolve any disputes which arise out of this agreement and the Commission may enforce the terms of this agreement.
18. This settlement agreement is effective as of May 26, 2005.

TALK AMERICA INC.

By: Aloysius T. Lawn, IV

Aloysius T. Lawn, IV

Its: Executive Vice President and General Counsel

Date 5/23/05

SBC MICHIGAN

By: [Signature]

Its: AVP-Local Interconnection Marketing

Date 5/24/05

# **Attachment 2**

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter on the Commission's own )  
motion, to resolve certain issues regarding )  
hot cuts. )  
\_\_\_\_\_ )

Case No. U-14463

**JOINT SUBMISSION OF SBC MICHIGAN AND  
ZENK GROUP, LTD., D/B/A/ PLANET ACCESS, CMC TELECOM, INC., SUPERIOR  
SPECTRUM, QUICK CONNECT, GLOBAL CONNECTION,  
AND GRID 4 COMMUNICATIONS  
REGARDING TRANSITION OF EMBEDDED BASE OF UNE-P LINES**

In response to the Commission's March 29, 2005 Order initiating a proceeding to promote settlement of hot cut process issues, SBC Michigan, Planet Access, CMC Telecom, Superior Spectrum, Quick Connect, Global Connection, and grid 4 Communications (collectively, "the CLECs") advise the Commission as follows:

1. Based on current circumstances, the CLECs and SBC Michigan agree that SBC Michigan's current processes for converting the embedded base of the CLECs' UNE-P lines to alternative serving arrangements (*e.g.*, all day cuts, coordinated hot cuts, frame due time cuts, voluntary batch hot cut offering) appear to be sufficient to enable the CLECs to transition their embedded bases of UNE-P customers to alternative serving arrangements by March 11, 2006. Accordingly, SBC Michigan and the CLECs have no dispute for the Commission to resolve.

2. The CLECs understand their obligation to submit appropriate orders to SBC Michigan to complete the transition of their embedded base of UNE-P lines to alternative serving arrangements (or to disconnect such UNE-P lines) by March 11, 2006. At this time, the CLECs do not have specific plans to transition their UNE-P lines to alternative serving arrangements, but will provide such plans to SBC Michigan as soon as reasonably possible.

3. SBC Michigan and the CLECs agree to cooperate in scheduling the orderly transition of their respective embedded bases of UNE-P lines to alternative serving arrangements, or the disconnection of those lines, in a manner that will avoid undue expense, enable SBC Michigan to efficiently process conversions for the CLECs and other CLECs, and to minimize any disruptions to customers.

Respectfully submitted,

Craig A. Anderson (P-28968)  
SBC MICHIGAN  
444 Michigan Avenue, Room 1750  
Detroit, Michigan 48226  
(313) 223-8033

DICKINSON WRIGHT PLLC

✓  
Signature valid

William J. Champion III

Digitally signed by William J. Champion III  
DN: cn=William J. Champion III,  
o=Dickinson Wright PLLC, c=US  
Date: 2005.05.25 16:12:31 -0400

By: \_\_\_\_\_  
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Planet Access, CMC Telecom, Superior Spectrum,  
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Communications

By: ✓ Gary Field

Signature valid

Gary L. Field (P37270)  
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Dated: May 25, 2005

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